

Attachment D
Proposed Restaurant Lease Agreement

Part 2 of 4

13.3.3. Type of Injury or Loss. This indemnification extends to and includes Claims for:

(a) Injury to any persons (including death at any time resulting from that injury);

(b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

(c) All economic losses and consequential or resulting damage of any kind.

13.3.4. Active or Passive Negligence; Strict Liability. Except as provided in this SECTION 13.3.4, the indemnification in SECTION 13.3.1 shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. The indemnification in SECTION 13.3.1 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one County Party was caused solely by the negligence or willful misconduct of that County Party. In that event, however, this indemnification shall remain valid for all other County Parties.

13.3.5. Indemnification Independent of Insurance Obligations. The indemnification provided in this ARTICLE 13 may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations under this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Lease shall not in any way restrict, limit, or modify Lessee's indemnification obligations under this Lease.

13.3.6 Survival of Indemnification. The clauses of this SECTION 13.3 shall survive the expiration or earlier termination of this Lease until all claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

13.3.7 Duty To Defend. Lessee's duty to defend County Parties is separate and independent of Lessee's duty to indemnify County Parties. The duty to defend includes claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that County Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend County Parties at any stage of any claim or suit within the scope of this SECTION 13.3.

13.4 Insurance. Lessee shall provide and maintain, during the Term and for such other

period as may be required herein, at its sole expense, insurance in the amounts and form specified in this Section and in EXHIBIT "E," "INSURANCE REQUIREMENTS," attached hereto.

13.4.1 Compliance with Insurer Requirements. Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, whether imposed by Lessee's insurers, County's insurers, or both. If Lessee's business operations, conduct, or use of the Premises cause any increase in the premium for any insurance policies carried by County, Lessee shall, within ten (10) business days after receipt of written notice from County, reimburse County for the increase. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

13.4.2. Survival of Insurance Requirements. Lessee shall, at Lessee's sole expense, maintain in full force and effect the liability insurance coverages required under this Lease and shall maintain County Parties and any lender specified by County as additional insureds, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

13.4.3 Insurance Independent of Indemnification. The insurance requirements set forth in this Section are independent of Lessee's indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's indemnification, and other obligations or to limit Lessee's liability under this Lease.

ARTICLE 14 HAZARDOUS MATERIALS

14.1 Hazardous Materials Laws - Definition. As used in this Section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

14.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that.

(a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

(b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

(c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or

(d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Hazardous Materials Law.

14.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by County's Lease Administrator.

(a) Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as required by Lessee's permitted use of the Premises, as described in Section 6.1 (PERMITTED USES).

(b) Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

(c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities;

(d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises;

(e) No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without County's prior written consent;

(f) Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of County; including any Hazardous Materials deposited on the Premises prior to the Commencement date.

(g) Lessee shall promptly supply County with copies of all notices, reports,

correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws;

(h) Lessee shall promptly notify County of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Lessee shall either: (a) pay the claim and remove the lien from the Premises, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises at the end of this Lease.

(i) At the end of this Lease, Lessee shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

14.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by County) reimburse and hold County and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

14.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all obligations and liabilities Lessee may have to County at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

14.6 Inspection. County and County's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County, may (but without the obligation or duty so to do), at any time and from time to time, on reasonable notice to

Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as County and Lessee may agree. If Lessee is not in compliance, County shall have the right, in addition to County's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as County in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. County will use reasonable efforts to minimize interference with Lessee's use of Premises but will not be liable for any interference caused by County's entry and remediation efforts. Upon completion of any sampling or testing County will (at Lessee's expense if County's actions are a result of Lessee's default under this Section) restore the affected area of the Premises from any damage caused by County's sampling and testing.

ARTICLE 15

ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

15.1 County's Consent to Assignment Required. Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without County's prior written consent. County may withhold its consent until Lessee has complied with the provisions of the following Sections of this Article. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include (i) an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee, and (ii) the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds twenty-five percent (25%) of the total ownership interest in Lessee.

15.2 County's Election to Consent to a Transfer. Lessee's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including (i) the name, address, business, business history and financial condition of the proposed assignee or sublessee (collectively, "Transferee") sufficient to enable County to determine the financial responsibility and character of the Transferee, (ii) a copy of the proposed assignment or sublease and the financial details of the proposed Transfer (including the duration, the rent and any security deposit payable under an assignment or sublease), (iii) the Transferee's proposed use of the Premises, and (iv) any other related information which County may reasonably require. County shall have the right (a) to withhold consent to the Transfer, if reasonable; (b) to grant consent; or (c) to consent provided that County is paid, as additional rent hereunder, all sums or other consideration to be paid to Lessee under the terms of the Transfer in excess of the total rent due hereunder. Any permitted sublease shall incorporate the provisions of EXHIBIT "F" (COUNTY OF SAN DIEGO REQUIRED SUBLEASE PROVISIONS), attached hereto.

15.2.1 Consent to Assignment or Sublease. County's consent to an assignment or sublease will not be effective until (i) a fully executed copy of the instrument accomplishing a

Transfer ("Transfer Instrument") has been delivered to County, including, without limitation, a copy of any trust deed encumbering Lessee's leasehold and the note secured thereby, (ii) in the case of a sublease, County has received from Lessee an original of the executed sublease, and (iii) in the case of an assignment, County has received a written instrument in which the assignee has assumed and agreed to perform all of Lessee's obligations under this Lease. Any rights acquired by a Transferee pursuant to any Transfer Instrument shall be subject to each and every covenant, condition and restriction set forth in this Lease and to all of the rights and interest of County hereunder except as may be otherwise herein specifically provided. County may require any permitted sublessee to make rent payments directly to County, in the amount of rent due hereunder. In the event of any conflict between the provisions of this Lease and the provisions of any Transfer Instrument, the provisions of this Lease shall control.

15.2.2 Sublease Rent to County. In each and every sublease of all or a portion of the Premises consented to by County for a use not subject to Percentage Rent, Lessee hereby obligates itself to pay to County, in addition to the rent specified in Article 4 (Rent) above, Additional Rent for each sublease. The County and Lessee will establish an equitable rental rate for non-restaurant uses. Notwithstanding the foregoing, in no case shall sublease rent to County for any non-restaurant use be less than five percent (5%) of the rental due Lessee from its sublessee during the term of the sublease. Calculation of such sublease rental shall include, but not be limited to, all compensation paid from sublessee to Lessee for taxes, insurance, and maintenance for the Premises or any portion thereof.

15.2.3 Denial of Consent to Transfer. Lessee shall submit all requests for approval of Transfers to the County in writing. If County fails to provide a written response to the request within forty-five (45) days from the date of receipt, the County shall be conclusively presumed to have denied its consent to the Transfer in question. If County communicates its denial of a proposed Transfer to Lessee within forty-five (45) days from the receipt of a request, and if Lessee shall so request in writing, County shall provide Lessee a statement of the basis on which County denied its consent within a reasonable time after the receipt of Lessee's notice. Lessee shall have the burden of proving that County's consent to the proposed Transfer was withheld unreasonably; such burden may be satisfied if County fails to provide a statement of a reasonable basis for withholding its consent within a reasonable time after Lessee's request therefor. Notwithstanding any of the foregoing provisions of this Section to the contrary, the following shall be deemed to be reasonable grounds for County to withhold consent to a Transfer for purposes of compliance with California Civil Code Section 1951.4:

(a) Lessee or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Lease, whether or not notice of default has been given by County.

(b) The prospective assignee or sublessee has not agreed in writing to keep, perform and be bound by all of the terms, covenants and conditions of this Lease.

(c) County reasonably objects to the business or financial condition of the

prospective assignee or sublessee and/or to the financial details of the proposed Transfer.

(d) All of the terms, covenants and conditions of the assignment or sublease, including any consideration therefor, have not been disclosed in writing to County.

(e) Any construction of improvements required of Lessee as a condition of this Lease has not been completed to the satisfaction of County.

(f) Nonpayment of the Transfer Fee described below. If Lessee believes that County has unreasonably withheld its consent to a Transfer, Lessee's sole remedy will be to seek a declaratory judgment that County has unreasonably withheld its consent or an order of specific performance or mandatory injunction requiring County's consent. Lessee will not have any right to recover damages or to terminate this Lease.

15.3 Encumbering the Leasehold Estate with a Mortgage. Any Transfer which consists of the grant of a deed of trust or similar encumbrance (such encumbrances are collectively referred to herein as a "Mortgage") by Lessee to secure the beneficial interest of a lender ("Beneficiary") in the Premises or Lessee's interests under this Lease, shall be subject to all of the provisions of this Article pertaining to the conclusion and approval of other Transfers, and shall also be subject to the additional terms and conditions set forth below:

(a) No Mortgage granted by Lessee shall encumber the fee title to the Premises at any time;

(b) Immediately following the recordation of any Mortgage affecting the Premises or Lessee's interest in this Lease, Lessee, at Lessee's expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request for delivery to County of a copy of any notice of default and of any notice of sale under such Mortgage, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision. County shall have thirty (30) days in which to cure any default after the time for Lessee to cure it has expired. Neither County's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the Mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the Mortgage if County, or lessee-in-possession of the Premises, promptly performs all other provisions of the Mortgage.

(c) The Mortgage documents shall provide that any proceeds from fire or extended coverage insurance shall be used first for repair or rebuilding of the leasehold Improvements and then to repay part of the outstanding mortgage.

(d) No permitted Mortgage shall cover any interest in any real property other than interests specifically subjected to mortgage by this Lease. No Mortgage permitted by this Lease shall cover any indebtedness not related to the Premises or cover more than one indebtedness.

15.3.1 Curable and Noncurable Defaults Under the Lease; County's Covenant of Forbearance. Where County has consented to a Mortgage encumbering Lessee's leasehold as required pursuant to this Article, then County, notwithstanding anything to the contrary in this Lease, shall not exercise its remedies under this Lease for Lessee's default, during the periods specified in this Section so long as the Beneficiary of such Mortgage takes the following actions.

15.3.1.1 If a curable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Cures Lessee's default within the same time period allotted to Lessee for cure of such default, plus an additional thirty (30) days (except that only ten (10) additional days shall be permitted in the case of a default in the payment of money from Lessee to County).

(b) Notifies County, within thirty (30) days following receipt of County's notice of Lessee's default, of its intention to effect this remedy;

(c) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(d) Keeps and performs, during the period until the leasehold shall be either (i) sold upon foreclosure pursuant to the Mortgage, or (ii) released or reconveyed pursuant to the Mortgage (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Lease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.2 If a noncurable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Notifies County, within ten (10) days after receipt of County's notice of Lessee's default, of its intention to effect this remedy;

(b) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(c) Keeps and performs, during the Foreclosure Period, all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required

by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.3 If Lessee fails to cure any curable default within the time period allowed for such cure in this Lease, no cure by a Beneficiary of any such default in the manner allowed under this Section shall reinstate Lessee in good standing under this Lease. If, following expiration of the cure period applicable to Lessee, the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section applicable to Lessee's default, including failing to expeditiously obtain title to Lessee's leasehold, then County shall be released from its covenant of forbearance hereunder, and may immediately terminate this Lease.

15.3.2 Transfer of Leasehold Estate; County's Option to Purchase. . Any Beneficiary who acquires title to the leasehold estate shall immediately provide County with written notice of such transfer. Notwithstanding any provision of this Section to the contrary, transfer of the leasehold estate to a Beneficiary in any manner, County shall have the option to purchase all right, title and interest in and to the leasehold and the Premises directly from the Beneficiary for the amounts, and pursuant to the terms, set forth in SECTION 3.2 (EARLY TERMINATION THROUGH COUNTY BUY-OUT) above.

15.3.2.1 Should County elect to not exercise its option to purchase the leasehold within the period described above, then, subject to the provisions of SECTIONS 15.4 (TRANSFER FEE), 15.6 (NO RELEASE OF LESSEE) and 15.7 (NO MERGER) below, and so long as the Beneficiary shall have observed all of the conditions of SECTION 15.3.1, above, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. Any further transfer of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

a. The provisions of SECTIONS 15.1, "COUNTY'S CONSENT TO ASSIGNMENT REQUIRED," and 15.2, "COUNTY'S ELECTION," above, shall apply to such further Transfer, and County's consent shall be required to such further Transfer; and

b. By its acceptance of the leasehold estate, the Transferee of such further Transfer assumes this Lease as to the entire leasehold estate and covenants with County to be bound hereby.

15.3.3 Article Controlling. In the event of any conflict between the provisions of this Article and any other provision of this Lease, this Article shall control.

15.3.4 Failure to Give Notice. Except as expressly set forth in this Article, County shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and County's

failure to provide any Beneficiary with any notice of any default hereunder shall not create any right or claim against County on behalf of Lessee or any Beneficiary.

15.4 Transfer Fee. If County is requested to consent to a Transfer hereunder, Lessee shall pay all County's attorneys' fees, plus a nonrefundable fee ("Transfer Fee") to reimburse County or County's agent for costs and expenses incurred in connection with such request. The Transfer Fee in effect as of January 2008 is Seven Hundred Fifty Dollars (\$750.00). County reserves the right to adjust the Transfer Fee at any time during the term of the lease to accommodate for staff costs increases. The adjusted amount shall be determined by use of the following formula:

$$A = \$750.00 \times (B/C)$$

Wherein:

"A" equals the adjusted Transfer Fee;

"\$750.00" equals the Base Transfer Fee that has been in effect as of January 2008;

"B" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January most closely preceding the date of request for consent to transfer; and

"C" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January 2008.

The Transfer Fee shall be delivered to County concurrently with Lessee's request for consent.

15.5 Transfer Premium. Transfer Premiums apply to assignments and may be collected in addition to any Transfer Fees which are applicable to the transaction.

15.5.1 Transfer Premium Payment. As a reasonable condition to County's consent to any assignment, Lessee shall pay to County five percent (5%) of a Transfer Premium which involves an assignment of the Lease, as defined in SECTION 15.5.2, below. Lessee shall pay to the County the Transfer Premium concurrently with assignment of the Lease.

15.5.2 Definition of "Transfer Premium". "Transfer Premium" means all consideration associated with an assignment above and beyond the costs that Lessee can document in connection with the development of the Premises and construction of the Improvements made by Lessee, or in the event of a subsequent assignment, all consideration paid by new Transferee which is above and beyond the consideration paid by Transferor to acquire its interest in the leasehold. If part of the Transfer Premium is payable by Transferee other than in cash, County's share of that non-cash consideration shall be in a form reasonably satisfactory to County.

15.5.3 Exemption from Recapture. This SECTION 15.5 does not apply to any

“Exempt Transfer.” An Exempt Transfer consists of any of the following:

- (a) Any Transfer for which County’s consent is not required; or
- (b) Any Transfer to an Affiliate of Lessee, as defined below.

As used herein, the term “Affiliate” means any entity that controls, is controlled by, or is under common control with Lessee. “Control” means the direct or indirect ownership of fifty-one percent (51%) of the voting securities of an entity or possession of the right to vote fifty-one percent (51%) of the voting interest in the ordinary direction of the entity’s affairs.

15.6 No Release of Lessee. No permitted Transfer shall release or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Lease, except to the extent the Lease is terminated as described above. Lessee may not amend the assignment or sublease in such a way as to reduce or delay payment of amounts that are provided in the assignment or sublease approved by County. County's acceptance of rent from any other person is not a waiver of any provision of this Article or consent to Transfer. County's consent to one Transfer shall not be deemed to imply County's consent to any subsequent Transfer. If Lessee's Transferee defaults under this Lease, County may proceed directly against Lessee without pursuing remedies against the Transferee. County may consent to subsequent assignments or modifications of this Lease by Lessee's Transferee, without notifying Lessee or obtaining its consent, and such action shall not relieve Lessee's liability under this Lease.

15.7 No Merger. No merger shall result from a Transfer pursuant to this Article, Lessee's surrender of this Lease, or a mutual cancellation of this Lease in any other manner except at the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Lease relating to the purchase or construction of Improvements. In the event of any such merger, County may either terminate any or all subleases or succeed to the interest of Lessee thereunder.

15.8 Approval of Temporary or Limited Activities. Notwithstanding any provision of this Article to the contrary, the County's Lease Administrator may, at his or her sole discretion, and without charging a Transfer Fee, give written authorization for the following activities on the Premises: (i) activities of a temporary nature, not to exceed one hundred twenty (120) calendar days, and (ii) activities of a limited nature which do not exceed ten (10) hours per week. Lessee shall maintain, on an approved County form, a listing of all such activities approved by the County, stating the nature, duration and other relevant matters regarding such activities, and shall make such form available to County for inspection upon request. Nothing herein shall relieve Lessee from its responsibilities under this Lease, and Lessee shall be responsible for insuring that any such activity approved by the County complies with all of the provisions of this Lease. Any such temporary or limited activity shall be subject to immediate termination upon delivery of written notification thereof from the County.

ARTICLE 16
DEFAULTS BY LESSEE; COUNTY'S REMEDIES

16.1 Events of Default. The occurrence of any of the following shall constitute a default by Lessee and a breach of this Lease:

(a) Failing or refusing to pay Minimum Monthly Rent, Percentage Rent or Additional Rent when due in accordance with the provisions of this Lease, and the default continues for five (5) days after notice from County; provided, however, that Lessee will not be entitled to more than one (1) notice for default in payment of any type of rent during any twelve-month period, and if, within twelve (12) months after any such notice, any rent is not paid when due, an event of default will have occurred without further notice;

(b) Failing or refusing to occupy and operate the Premises in accordance with the provisions of this Lease;

(c) Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in subparagraphs (a) and (b) above, the breach of which Lessee is capable of curing after reasonable notice from County;

(d) Maintaining, committing or permitting on the Premises waste, a nuisance, or use of the Premises for an unlawful purpose, or assigning or subletting this Lease in a manner contrary to the provisions of this Lease; or understating Gross Sales by more than five percent (5%)

(e) Failing or refusing to permit County access to all areas of the Premises as set forth in Section 12.5 (Annual Leasehold Compliance Surveys) above;

(f) The occurrence of any of the events set forth in Section 19.1 (RIGHT OF TERMINATION) below.

16.2 Notices. Following the occurrence of any of the defaults specified in the preceding Section, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and demanding that Lessee either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to County:

(a) For nonpayment of Minimum Monthly Rent, Percentage Rent or Additional Rent, ten (10) working days;

(b) For a curable default, a reasonable period not to exceed ten (10) working days, provided, however, that if such default cannot be cured within said time period, Lessee shall be deemed to have cured such default if Lessee so notifies County in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and

actually completes said cure; and

(c) For a noncurable default, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and County shall have the right to demand in said notice that Lessee, and any subtenant, quit the Premises within five (5) working days.

To the extent permitted by applicable State law, the time periods provided in this Section for cure of Lessee's defaults under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

16.3 County's Rights and Remedies. Should Lessee fail to cure any such defaults within the time periods specified in the immediately preceding Section, or fail to quit the Premises as required thereby, County may exercise any of the following rights without further notice or demand of any kind to Lessee or any other person, except as may otherwise be required by applicable California law:

(a) The right of County to terminate this Lease and Lessee's right to possession of the Premises and to reenter the Premises, take possession thereof and remove all persons therefrom, following which Lessee shall have no further claim on the Premises or under this Lease;

(b) The right of County without terminating this Lease and Lessee's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of Lessee and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4; or

(c) The right of County, even though it may have reentered the Premises in accordance with the immediately preceding subparagraph (b) of this Section, to elect thereafter to terminate this Lease and Lessee's right to possession of the Premises.

Should County have reentered the Premises under the provisions of subparagraph (b) of this Section, County shall not be deemed to have terminated this Lease, the liability of Lessee to pay rent or other charges thereafter accruing, or Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless County shall have notified Lessee in writing that it has so elected to terminate this Lease and Lessee's right to possession. Lessee further covenants that the service by County of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless County elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Lessee) be deemed to be a termination of this Lease. In the event of any reentry or taking possession of the Premises as aforesaid, County shall have the right, but not the obligation, at Lessee's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by Lessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property

located therein and to place the same in storage at a public warehouse at the expense and risk of Lessee. The rights and remedies given to County in this Section shall be additional and supplemental to all other rights or remedies which County may have under laws in force when the default occurs.

16.4 County's Damages. Should County terminate this Lease and Lessee's right to possession of the Premises pursuant to the provisions of subparagraph (a) or (c) of the immediately preceding Section, or Article 16 (DEFAULTS BY LESSEE; COUNTY'S REMEDIES), County may recover from Lessee as damages any or all of the following:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of such termination;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rent loss that Lessee proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Lessee proves could be reasonably avoided;

(d) Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, any costs or expense incurred by County in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; and

(e) At County's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used in subparagraphs (a) and (b) of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate allowed by California law. As used in subparagraph (c) of this Section, "the worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

All rent, other than Minimum Monthly Rent shall, for the purposes of calculating any amount due under the provisions of subparagraph (c) of this Section, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that, if it becomes necessary to compute such rent before such a sixty (60) month period has

occurred, then such rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

16.5 Fixtures and Personal Property. In the event of Lessee's default, all of Lessee's merchandise, Fixtures and Personal Property shall remain on the Premises and, continuing during the length of said default, County shall have the right to take the exclusive possession of same and to use the same free of rent or charge until all defaults have been cured or, at its option, to require Lessee to remove same forthwith.

16.6 County's Security Interest. To secure Lessee's performance of any and all of Lessee's obligations under this Lease, Lessee hereby grants County an express first and prior contractual lien and security interest in Lessee's merchandise, Fixtures and Personal Property located on the Premises, and also upon all proceeds of any insurance that may accrue to Lessee by reason of the destruction or damage to such property. Lessee waives the benefit of all exemption laws in favor of this lien and security interest. This lien and security interest is given in addition to County's statutory lien and is cumulative with it. Upon the occurrence of an event of default, these liens may be foreclosed with or without court proceedings by public or private sale, so long as County gives Lessee at least fifteen (15) days' notice of the time and place of the sale. County shall have the right to become the purchaser if it is the highest bidder at the sale. To perfect said security interest, Lessee shall execute and deliver to County such financing statements required by the applicable Uniform Commercial Code as County may request.

16.7 Lessee's Waiver. Notwithstanding anything to the contrary contained in this Article, Lessee waives (to the fullest extent permitted under law) any written notice (other than such notice as this Article specifically requires) which any statute or law now or hereafter in force prescribes be given Lessee. Lessee further waives any and all rights of redemption under any existing or future law in the event its eviction from, or dispossession of, the Premises for any reason, or in the event County reenters and takes possession of the Premises in a lawful manner.

16.8 Interest. Any amounts, other than rent, due from Lessee under the provisions of this Lease which are not paid when due shall bear interest at the rate of four percent (4%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which County is permitted by law to charge.

ARTICLE 17

DEFAULTS BY COUNTY; REMEDIES

If County shall neglect or fail to perform or observe any of the terms, covenants, or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default or, when more than thirty (30) days shall be required because of the nature of the default, if County shall fail to proceed diligently to cure such default after written notice thereof, then County shall be liable to Lessee for any and all damages sustained by Lessee as a result of County's breach; provided, however, that (a) any money judgment resulting from any default or

other claim arising under this Lease shall be satisfied only out of the current rents, issues, profits and other income County receives from its operation of the Premises, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Net Income" for purposes of this Article only), (b) no other real, personal or mixed property of County, wherever located, shall be subject to levy on any such judgment obtained against County, (c) if such Net Income is insufficient to satisfy such judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by County for Lessee to perform or observe such terms, covenants or conditions at County's expense. Lessee hereby waives, to the extent permitted under law, any right to satisfy said money judgment against County except from Net Income.

ARTICLE 18 ABANDONMENT

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease nor permit the Premises to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Lease. If Lessee shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any Personal Property or Fixtures belonging to Lessee and left on the Premises shall, at the option of County, be deemed abandoned. In such case, County may dispose of said Personal Property and Fixtures in any manner provided by California law and is hereby relieved of all liability for doing so. These provisions shall not apply if the Premises should be closed and business temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Lessee.

ARTICLE 19 BANKRUPTCY

19.1 Right of Termination. Should any of the following events occur, County may terminate this Lease and any interest of Lessee therein, effective with the commencement of the event:

(a) Proceedings are instituted whereby all, or substantially all, of Lessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Lessee's creditors, and such proceedings continue for at least thirty (30) days;

(b) Any creditor of Lessee institutes judicial or administrative process to execute on, attach or otherwise seize any of Lessee's merchandise, Fixtures or Personal Property, located on the Premises and Lessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within thirty (30) days;

(c) A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law,

and is not dismissed within thirty (30) days;

(d) Lessee makes a bulk sale of all, or substantially all, of Lessee's merchandise, Fixtures or Personal Property located on the Premises, except in accordance with the provisions of Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease or except in connection with a permitted assignment or subletting under this Lease, and fails to replace the same with similar items of equal or greater value and utility within three (3) days.

If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession), and such trustee or Lessee transfers Lessee's interest hereunder, then County shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with such transfer, minus the rent payable by Lessee hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Lessee hereunder arising on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to County an instrument confirming such assumption.

19.2 Request for Information. Within ten (10) days after County's request therefor, Lessee shall provide County and any mortgagee or proposed mortgagee of County, as County shall specify, such financial, legal and business information concerning any of the events described in this Article as County shall request.

ARTICLE 20

DAMAGE OR DESTRUCTION

20.1 Insured Casualty. Should the Lessee's merchandise, Fixtures, improvements or personal property be damaged by fire, or other perils covered by the insurance Lessee is required to carry under the terms of this Lease, Lessee shall undertake to restore such merchandise, Fixtures, improvements or personal property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of a total destruction of the Premises so that the Premises are rendered unusable, either party shall have the right to terminate this Lease. If the parties to this Lease cannot agree upon the extent and amount of such damage or destruction, County shall promptly designate a certified architect, registered engineer, or licensed building contractor who shall determine such matters, and the determination of such architect, engineer, or contractor shall be final and binding upon the parties to this Lease.

20.2 Construction Provisions. In the event of any reconstruction of the Premises required of Lessee pursuant to this Article, Lessee shall, to the extent of available insurance proceeds, repair or rebuild such building and improvements to substantially the same condition they were in immediately preceding such damage or destruction. Lessee shall, to the extent of available insurance

proceeds, also repair or replace its Personal Property situated upon the Premises which may have been damaged or destroyed by such cause as may in the opinion of County be necessary for the resumption by Lessee of its business upon the Premises.

20.3 Abatement of Rent. In the event of reconstruction by Lessee pursuant to this Article, Lessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Lessee to pay Minimum Monthly Rent, Percentage Rent and Additional Rent shall remain in full force and effect. Lessee shall not be entitled to any compensation or damages from County for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

20.4 Release of Liability. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to County, except for items which have theretofore accrued and are then unpaid. In the event of termination of this Lease under this Article, all proceeds from Lessee's insurance, but excluding proceeds for Lessee's merchandise and Personal Property, shall be disbursed and paid to County. Monthly rent shall be apportioned and paid to the time of termination.

20.5 Uninsured Casualty. In the event the Premises are damaged by any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty not covered by Lessee's insurance, and (i) the Premises are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (ii) the damage is such that the Premises cannot be repaired and restored within ninety (90) days after the casualty, Lessee shall have the election, and shall within thirty (30) days following the date of such damage give County written notice of Lessee's election, either to commence reconstruction of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or not to perform such reconstruction of the Premises, in which event this Lease shall cease and terminate upon Lessee's notice of its election to terminate.

20.6 Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, in the event that: (i) the Premises are damaged or destroyed to an extent of more than twenty-five percent (25%) of their replacement cost; or (ii) the damage is such that the Premises cannot be repaired or restored within ninety (90) days after the casualty, County shall have the right to terminate this Lease upon thirty (30) days notice.

ARTICLE 21 EMINENT DOMAIN

21.1 Condemnation. If all of the Premises is taken under eminent domain proceedings by

a party other than County, or, if less than all of the Premises is taken under such proceeding and in the opinion of County's Lease Administrator the part taken substantially impairs the ability of Lessee to use the remainder of the Premises for the purposes permitted by this Lease, then either County or Lessee may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

21.2 Continuation of Lease After Condemnation. If this Lease is not terminated by County or Lessee, it shall remain in full force and effect as to any portion of the Premises remaining, and:

(a) This Lease will end as of the date possession of the part is taken by the public entity as to the part of the Premises that is taken;

(b) Prepaid rent will be allocated in proportion to the relationship that the compensation paid to Lessee and County by the public entity for the portion of the Premises condemned, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity; and

(c) Minimum Monthly Rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity; and

(d) At its cost, Lessee shall restore so much of the remaining portion of the Premises as is required to create a reasonably sound architectural (or economically feasible) unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first class materials, all in accordance with the requirements of Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) above;

21.3 Lessee's Award. In connection with any taking, Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of Fixtures that Lessee was entitled to remove and moving expenses) only so long as Lessee's award does not diminish or otherwise adversely affect County's award.

21.4 Allocation of Condemnation Award for a Total Taking of the Premises. All awards for the total taking of the Premises or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be the property of County, whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damage; provided, however, that Lessee shall be entitled to any award for (i) the value of Lessee-constructed improvements minus depreciation of that percent per year which is determined by dividing 100 years

by the length of the initial Term, and (ii) loss of or damage to Lessee's trade fixtures, and removable personal property. Notwithstanding the foregoing, any amount of condemnation compensation due to Lessee pursuant hereto shall go first to County to satisfy (i) County's attorneys' fees, appraisal fees, and other costs incurred in prosecuting the claim for the award, (ii) County's lost rent and the value of the reversion as of the ending date, and (iii) any financial obligations of Lessee to County pursuant to the provisions of this Lease, and second to any creditors of Lessee to satisfy the remaining balance of any due to such creditor from any County-approved loan encumbering the Premises.

ARTICLE 22 SALE OR MORTGAGE BY COUNTY

22.1 Sale or Mortgage. County may at any time, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey County's interest in whole or in part, in the Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively referred to in this Article as a "Sale").

22.2 Release on Sale. From and after a Sale, County shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Lease because of any act, occurrence or omission of County occurring after such Sale.

ARTICLE 23 SUBORDINATION; ATTORNMENT

23.1 Subordination. Without the necessity of any other document being executed and delivered by Lessee, this Lease is and shall be junior, subject and subordinate to any existing or future permits, agreements, contracts or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises; Lessee shall be bound by the terms and provisions of such permits, agreements, contracts or approvals. In addition, this Lease is and shall also be subject, subordinate and junior to all ground leases, mortgages, deeds of trust and other security instruments of any kind now covering the Premises, or any portion thereof.

23.2 Attornment. In the event any proceedings are brought to foreclose, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by County covering the Premises, Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as landlord under this Lease.

ARTICLE 24 COUNTY'S RIGHT OF ACCESS

24.1 County's Right to Enter the Premises. County, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or Lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect

to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Lease requires County to provide, (e) post notices of nonresponsibility or similar notices, (f) make repairs that this Lease requires County to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises, or (g) exercise its rights pursuant to Section 2.3, "Reservations to County/Easement Reservations," above; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible.

24.2 Lessee's Waiver of Damages Claims. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide County with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). County will have the right to use any means that County may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by County by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor will the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay. Notwithstanding any provision of this Lease to the contrary, however, should County's entry on the Premises temporarily interfere with the use of any or all of the Premises by Lessee, County's Lease Administrator, in his or her sole discretion, may temporarily reduce the rental in proportion to the interference, as determined by County's Lease Administrator, with Lessee's use of the Premises. Nothing in this Section shall apply to any actions in eminent domain, which shall be governed solely by Article 21, "Eminent Domain," above.

ARTICLE 25 QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, County covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of County. County will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the County.

ARTICLE 26 HOLDING OVER

If Lessee remains in possession of the Premises, for any reason, after the expiration of the term of this Lease without executing a new Lease, or after County has declared a forfeiture by reason of a default by Lessee, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy. The Base Monthly Rent payable during any period of holding over shall be equal to one hundred fifty percent (150%) of the Base Monthly Rent payable during the period immediately preceding Lessee's holding over.

ARTICLE 27 NOTICES

27.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the addresses specified in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS). Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

27.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices County is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by County attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing employee and by County mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 28 NONDISCRIMINATION

Lessee hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

ARTICLE 29 AFFIRMATIVE ACTION PROGRAM

Lessee, by maintaining a business location within San Diego County and by being able to use such business location by virtue, in whole or in part, of this Lease, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by this reference. A copy of such Affirmative Action Program for Vendors will be furnished to Lessee by County's Lease Administrator upon request.

ARTICLE 30
WAIVER OF RELOCATION ASSISTANCE BENEFITS

30.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

(a) By entering into this Lease and becoming a tenant of County, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code, §§ 7260 et seq.) (collectively, the "Relocation Statutes"), should County at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make such payments to Lessee even where such displacement of Lessee does not otherwise constitute a breach or default by County of its obligations pursuant to this Lease.

(b) Under the Relocation Statutes in effect as of the Effective Date of this Lease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1,000) or more than Twenty Thousand Dollars (\$20,000).

30.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of County's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the County's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases County from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as County may reasonably require.

ARTICLE 31
RECORDS, ACCOUNTS AND AUDITS

31.1 Lessee's Duty to Keep Records. Lessee shall, at all times during the term of this Lease, and for a period of at least five (5) years following termination or expiration of this Lease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Such records shall also include the source and disposition of all trash collected and disposed

of by Lessee in the operation of its business. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

31.2 County's Right to Audit. All Lessee's books or accounts and records shall be kept and made available at one location within the limits of the County of San Diego. County shall have the right at any reasonable time to examine and perform audits of Lessee's records pertaining to its operations on the Premises. The cost of said audits shall be borne by County; however, if the county's audit finds that the gross sales were under reported by 5% or more, the Lessee shall pay the cost of the audit. Lessee shall provide to County at Lessee's expense, necessary data to enable County to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises.

ARTICLE 32 GENERAL PROVISIONS

32.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

32.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by County make claim for monies owed, Lessee shall indemnify, defend and hold County harmless therefrom.

32.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

32.4 County Approval. Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean approval of County's Lease Administrator or said Administrator's representative as authorized by said Administrator in writing.

32.5 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease; any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

32.6 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

32.7 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from County, execute and deliver to County a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by County, such as the date to which rent and other charges are paid, Lessee's knowledge concerning any outstanding defaults with respect to County's obligations under this Lease and the nature of such defaults if they are claims. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusive upon Lessee that this Lease is in full force and effect, except to the extent any modification has been represented by County, and that there are no uncured defaults in the County's performance, and that not more than one month's rent has been paid in advance.

32.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

32.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

32.10 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

32.11 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Lease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

32.12 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

32.13 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide County with a written schedule of its normal hours of business operation on the

Premises, and post notice of such schedule in an area visible to pilots and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to County on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

32.14 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

32.15 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

32.16 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee.

32.17 Successors & Assigns. This Lease shall be binding on an inure to the benefit of the parties and their successors and assigns, all of whom shall be jointly and severally liable hereunder, except as may otherwise be provided herein.

32.18 Time of Essence. Time is of the essence of each and every provision of this Lease.

32.19 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of the Lease by reason of such breach, regardless of County's knowledge of such preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping County from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen the right of County to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Lessee, or construed to inhibit or prevent the rights of County to exercise its rights with respect to any default, dereliction or breach of this Lease by Lessee.

IN WITNESS WHEREOF, County and Lessee have duly executed this Lease as of the day and year first above written.

Lessee:

County:

By: _____

By: _____
Clerk, Board of Supervisors

Title: _____

By: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY _____
SENIOR DEPUTY